IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 784 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JASUBHAI NATWARBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR KB PANDE for Appellant

MR MA BUKHARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 05/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal arises of the judgment and order dated 1st July, 1992, passed by the learned Additional Sessions Judge, Vadodara, in Sessions Case No. 134/91. The appellant before this court is the accused and has been convicted for the offence punishable under section 302 IPC, and has been sentenced to life imprisonment and a fine of Rs.3000/-. In case of default of payment of fine, sentence of simple imprisonment for one year has been passed.

It was the case of the prosecution that the victim Kantibhai Vasava and the accused Jasubhai Natvarbhai Vasava both were the residents of village Chandpura. On 2nd June, 1991, late in the evening at around 9-30, the deceased Kantibhai, the accused Jasubhai and one Bhalubhai Khodabhai were sitting in the house of Bhalubhai Khodabhai. The marriage of one Chhitubhai, the son of Bhalubhai Khodabhai was approaching some days thereafter. On the occasion of the marriage of his son, Bhalubhai Khodabhai required the village utensils. The village utensils needed some repairs, for which contribution was being collected. The deceased Kantibhai insisted for contribution of Rs.51/- from each house in the village, to which the accused Jasubhai did not agree. This disagreement resulted into a quarrel between Kantibhai and the deceased Jasubhai. At that time, the wife of Kantibhai one Bhikhiben came to summon Kantibhai for his evening meal, and Kantibhai left the house of Bhalubhai. After reaching his house and before having his supper, Kantibhai once again went out of his house to answer the call of nature. His wife Bhikhiben followed him and was standing on the platform (Otla) outside her house. At that time, at some distance from her house, she saw the accused Jasubhai coming towards her husband Kantibhai, stabbing Kantibhai on the neck and running away. Kantibhai followed the accused Jasubhai for some distance and then fell down. Bhikhiben immediately rushed to the place of incidence, tried to pursue Jasubhai and started shouting. Several village people gathered there and the body of Kantibhai was lifted and brought back to his house. The accused Jasubhai was thus alleged to have committed the murder of the deceased Kantibhai.

The prosecution has relied upon the complaint (EX-13) lodged by Bhikhiben (PW-2). Bhikhiben has been reported to be the eye witness to the incidence. She has supported the statements made in the complaint. However, she has also stated that after stabbing Kantibhai with

knife, the accused Jasubhai threw away the knife and ran away. She had seen the knife at the place of the incidence, that Kantibhai after running some distance following the accused, fell down near the house of Koyji Fulji, the light in the compound of her house was on. Another eye witness upon whose evidence, the prosecution has relied, is Somabhai Melabhai (PW-4). He has stated that on 2nd June, 1991, after supper, he was sitting on the platform (Otla) of his house, while he saw the accused Jasubhai stabbing the deceased Kantibhai and running away. He has stated that he saw some women following the accused Jasubhai. He has stated that the accused Jasubhai had thrown away the knife which was lying near the house of the deceased Kantibhai. He has also stated that the street-light near his house was not working on the said night. The Medical Officer, Primary Health Centre, Vaghodiya, has proved the Post-mortem Note (EX-8). He has certified that the deceased Kantibhai had received two knife injuries, one on the left side of his chin, and one on the right side of the neck. The injury on the right side of the neck was 2.5 cm below the mandible and was 6 cm deep. The injury on the left side of the neck was just below the left ramus of the mandible about 3 cm below the chin and was some 2.5 cm deep. The injury on the right side of the neck had cut through the main artery in the neck and also the trachea. He has opined that the injuries could have been inflicted by the muddamal knife. He has certified that the death was caused on account of " Vascular shock due to extensive (massive) external hemorrhage." The Panch Witness Vajirbhai Chhotabhai has proved the discovery panchnama (EX-28). He has stated that he was summoned as a panch on 10th June, 1991, and he along with the police and the accused Jasubhai, had proceeded to some desolate place near the village Khervadi as indicated by the accused Jasubhai. After leaving the tar road, they went along the kachcha road and arrived near the hillock known as 'Koriya Dungar'. From there, the Panch and the police were led to a place 500 steps farther by the accused Jasubhai and there from under the shrub, the accused Jasubhai recovered the muddamal knife. The muddamal knife along with other muddamal articles was sent for forensic examination. Upon the said examination, the human blood of group 'AB' was found in the samples of soil collected from the place of incidence, and the clothe of the deceased. The human blood of group 'AB' was found on all the said samples. However, the group of the human blood found on the knife could not be determined.

Upon perusal of the evidence, we find several discrepancies which are not explained by the prosecution. As narrated hereinabove, both the eye witnesses Bhikhiben (PW-2) and Somabhai Melabhai (PW-4) have stated that after stabbing the deceased Kantibhai, the accused Jasubhai had thrown away the knife, which both of them had seen. If these statements made by the eye witnesses were true, the discovery of the muddamal knife from a desolate place on 'Koriya Dungar' becomes doubtful. Besides, the Panch witness Vajirbhai Chhotabhai in his deposition does not prove that it was the same knife which the accused had used for committing the alleged offence or that it was the accused who had concealed the knife at the place from which it was recovered. Further, it is the case of both the eye witnesses that after the deceased Kantibhai fell down on the street, his body was carried to the house of Kantibhai and was laid there. The witness Bhikhiben has deposed that while the body was brought to the house and laid there, it was still bleeding profusely. However, the inquest panchnama (EX-25) does not disclose presence of blood spots or stains anywhere in the house or near the entrance of the house. The panchnama of scene of offence (EX-18) discloses presence of a blood spot some 20 ft. away from the house of the deceased, and another blood spot some 52 ft. away from the first blood spot near the house of one Ambalal Fuljibhai. The said Panchnama discloses the presence of the third blood spot some 70 ft. away from the second blood spot. The blood stains are found around these three blood spots and on the street between these three blood spots. According to the eye witnesses, after the stab injuries, the deceased Kantibhai had run some distance and then fell down. From the place where he fell down, he was carried back to the home. Thus, the prosecution case does not explain the third blood spot found on the street 70 ft. farther from the second spot and a trail of blood stains between the second and the third blood spots. These discrepancies considered collectively, leave a nagging doubt in respect of the prosecution case as made out by the eye witnesses and the nature of investigation also. We find that except the say of the eye witnesses, there is no other independent evidence to prove the presence of the accused Jasubhai at the place of incidence. As we have discussed hereinabove, the testimony of the eye witnesses Bhikhiben (PW-2) and Somabhai Melabhai (PW-4) is not beyond reproach. We would be hesitant in recording the conviction of the accused Jasubhai on the evidence of these two eye witnesses alone. We, therefore, hold that the prosecution has failed to prove the guilt of the

accused Jasubhai beyond reasonable doubt. The accused Jasubhai is, therefore, entitled to the benefit of doubt. We accordingly give the benefit of doubt to the accused Jasubhai and hold that the charge framed against him has not been proved, the accused Jasubhai is acquitted of the charge framed against him. The conviction recorded by the learned trial Judge and the sentence passed are quashed and set aside.

Appeal is allowed. The accused-appellant Jasubhai Natvarbhai Vasava, unless he is required to be detained in some other case, is ordered to be released forthwith. The muddamal articles be disposed of as directed by the learned trial Judge.

(MS R.M.DOSHIT J)

(A.L.DAVE J)

JOSHI